

## **EXHIBIT 12**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

J . B . D . L . C O R P . , d / b / a : C I V I L A C T I O N  
B E C K E T T A P O T H E C A R Y , et al .

Plaintiffs:

WYETH - AYERST LABORATORIES :  
INC., et al. :

Defendants : NO. C-1-01-704

M A Y 2 7 , 2 0 0 4

10 \* \* \*

11 Videotaped Oral deposition of  
12 JEFFREY J. LEITZINGER, PH.D., taken  
13 pursuant to notice, was held at the law  
14 offices of REED SMITH, One Liberty Place,  
15 1650 Market Street, Suite 2500,  
16 Philadelphia, Pennsylvania, beginning at  
17 9:42 a.m., on the above date, before  
18 Nancy D. Ronayne, a Court Reporter and  
19 Commissioner of Deeds in the Commonwealth  
20 of Pennsylvania.

ESQUIRE DEPOSITION SERVICES

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1880 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103

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## JEFFREY J. LEITZINGER, PH.D.

<p>1 analysis about the impact as to each and 2 every class member.</p> <p>3 Q. What individual analysis 4 would you need to know to come to a 5 conclusion as to whether a particular 6 member of the class was harmed?</p> <p>7 MR. CRAMER: Objection to 8 form, misstates the testimony.</p> <p>9 THE WITNESS: Well if you 10 were to try for some reason to 11 analyze that question on a class 12 member by class member basis, 13 without having spent a lot of time 14 thinking about how exactly what 15 would be the most effective way to 16 undertake that inquiry, it seems 17 to me it would involve trying to 18 determine whether the increases in 19 Premarin prices that are the, the 20 source of the class-wide 21 overcharge did in fact result in 22 higher prices paid for Premarin as 23 to each class member.</p> <p>24 BY MS. VARMA:</p>	<p>254</p> <p>1 THE WITNESS: No, I have not 2 done an analysis of that sort.</p> <p>3 BY MS. VARMA:</p> <p>4 Q. Let me take you to page 14 5 of your report. Premarin Profitability 6 and Margins. And let me ask you a 7 question independent of the report. Do 8 you have an opinion on whether Premarin 9 had market power, Wyeth had market power 10 in Premarin in 1998?</p> <p>11 A. Yes, I do and I believe that 12 they did.</p> <p>13 Q. And was that market power 14 substantial as you've used the term 15 substantial in this deposition?</p> <p>16 A. Yes.</p> <p>17 Q. If Wyeth had market-- 18 substantial market power prior to 19 Cenestin's entry, why was it not charging 20 the price levels that it charged after 21 Cenestin's entry?</p> <p>22 MR. CRAMER: Objection to 23 form.</p> <p>24 THE WITNESS: Well, I'm not</p>
<p>1 Q. And you haven't investigated 2 that question right now?</p> <p>3 MR. CRAMER: Which question?</p> <p>4 BY MS. VARMA:</p> <p>5 Q. The question whether each 6 and every class member was harmed?</p> <p>7 A. Well, I have-- I have not 8 tried to go undertake some individualized 9 analysis class member by class member to 10 see whether that was the case. I do-- I 11 do hold the view that the affect of this 12 increase in prices that is the crux of 13 the anticompetitive impact would be class 14 wide.</p> <p>15 Q. Class wide, okay. And have 16 you determined with respect to the 17 damages you attribute to the shift in 18 share that would happen in the but-for 19 world between Premarin and Cenestin, in 20 other words, the additional but-for 21 Cenestin share, whether each and every 22 class member was injured in that way?</p> <p>23 MR. CRAMER: Objection to 24 form.</p>	<p>255</p> <p>1 sure I have an opinion that takes 2 the form of in some way having 3 identified the particular factors 4 that went into price setting in 5 1998. I don't know the extent to 6 which in 1998 they-- what Premarin 7 was thinking about in terms-- I'm 8 sorry, what Wyeth was thinking 9 about in terms of prospect for 10 generic entry. I'm-- I also don't 11 know how they might have seen 12 prior to the time that they had 13 occasion to actively employ their 14 contractual restrictions as a 15 means for limiting Cenestin's 16 competition, what they-- what 17 their mind set was about the role 18 that that might play in terms of 19 limiting competition from the 20 other ERT firms. Those are 21 potential factors that might 22 underlie the difference in 23 pricing. But I don't-- I haven't 24 gone as far as to explicitly</p>

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<p>1 conclude that that-- that that is  2 the reason.  3 BY MS. VARMA:  4 Q. The market share rebate  5 contracts were in effect through '96 and  6 '98, were they not?  7 A. Yes.  8 Q. Would you agree with me that  9 the entry of a competitor does not  10 increase the incumbent's market power?  11 MR. CRAMER: Asked and  12 answered.  13 THE WITNESS: Taking that  14 event by itself and holding  15 everything else constant, yes, I  16 would agree with you.  17 MR. CRAMER: You went into  18 these things five hours ago.  19 MS. VARMA: That's why it  20 was an easy one to answer.  21 BY MS. VARMA:  22 Q. On page 14 you have a  23 statement: A basic economic proposition  24 is that firms operating in competitive</p>	<p>258  1 pharmaceutical product selling in  2 what would be described as a-- as  3 a competitive market, certainly  4 competitive in the sense-- in the  5 sense of the kind of market that  6 produces prices equal to marginal  7 costs.  8 BY MS. VARMA:  9 Q. Are you aware of any brand  10 of drugs whose price equals marginal  11 cost?  12 A. I don't think so. No.  13 Q. Does that lead you to the  14 conclusion that every branded drug has  15 market power?  16 A. They either-- in my  17 experience they either have it or they  18 have lost it as a result of generic entry  19 but have made a-- a corporate resource  20 decision to essentially cede the market  21 to the generics and hence have, are  22 charging prices that are greatly out of  23 line with the competitive alternative in  24 the market.</p>
<p>259  1 markets will have prices that reflect  2 marginal costs. By reflect marginal  3 costs do you intend to mean here that in  4 competitive markets prices will equal  5 marginal costs?  6 A. Yes. I think that-- I think  7 that was the intention in that-- in that  8 language that is it was stating what is  9 otherwise referred to as the perfectly  10 competitive outcome.  11 Q. Is it your opinion that  12 brand name drugs are priced even in  13 competitive markets at marginal cost?  14 MR. CRAMER: Objection to  15 form.  16 THE WITNESS: I don't as a  17 general matter hold a view that  18 brand name pharmaceutical products  19 are priced at marginal costs. I'm  20 also though of the view I'm not  21 sure I have seen given the  22 organization and structure of this  23 industry any instance in which  24 there is a brand name</p>	<p>261  1 Q. Okay. There's another  2 statement, next statement in the  3 sentence, two statements down: In 1999  4 Premarin accounted for 20 percent of  5 Wyeth's global sales and 36 percent of  6 profit.  7 MR. CRAMER: Operating  8 profit.  9 BY MS. VARMA:  10 Q. Operating profit. What's  11 the significance of Premarin accounting  12 for 20 percent of Wyeth's global sales to  13 your analysis?  14 A. I don't know that fact alone  15 is of any significance except to  16 understand that Premarin is a very  17 important and lucrative product.  18 Q. How does that tell you  19 anything about whether Wyeth has market  20 power, sale of Premarin?  21 A. The fact that Premarin  22 accounts for 20 percent of Wyeth's global  23 sales I think standing alone does not  24 tell you anything about whether or not</p>